

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: John L. Beebe Family Partnership; Teresa L. Beebe; Harry R. Beebe; ~~Robin W. Hersel;~~  
~~Frederick J. Hersel;~~ Charlotte A. Morain; Mark R. Morain

**CASE 76D-0204-R-2023**  
76D 14266-00

OBJECTOR: Charlotte A. Morain

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

### **Statement of the case**

Charlotte A. Morain filed an objection to the ownership of irrigation claim 76D 14266-00.

Claim 76D 14266-00 appeared in the Preliminary Decree with a notice issue remark concerning point of diversion and ditch name. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

On March 13, 2023, Charlotte A. Morain and Frederick J. Hersel filed an Affidavit resolving Ms. Morain's objection.

Montana law requires the Water Court to resolve objections and issue remarks.

### **Issues**

1. Should the court accept the stipulated terms?
2. Is the notice issue remark on claim 76D 14266-00 resolved?

### **Finding of fact**

Frederick J. Hersel and Robin W. Hersel (deceased) are not co-owners of claim 76D 14266-00. The Maize Ditch does not run through their property. Mr. Hersel has "no interest" in diverting water through the Maize Ditch. Frederick J. Hersel and Robin W. Hersel (deceased) should be removed from ownership of the claim abstract.

### **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim

is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

## **Analysis**

### **Issue 1 – acceptance of stipulated terms**

The parties agree to the removal of Frederick J. Hersel and Robin W. Hersel (deceased) from the ownership of claim 76D 14266-00.

### **Conclusions of law**

The evidence entered into the record justifies the modifications to the claim and resolves Charlotte A. Morain’s objection to the claim. The agreed upon terms should be accepted by the court.

## **Issue 2 – notice issue remark resolution**

Claim 76D 14266-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. These proceedings resolve the only objection filed to the claim.

## **Conclusion of law**

The referenced issue remark served its notice purpose.

## **Recommendations**

Frederick J. Hersel and Robin W. Hersel (deceased) should be removed from the ownership of claim 76D 14266-00.

The notice issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

## **ELECTRONICALLY SIGNED AND DATED BELOW.**

### **Service via USPS Mail**

John L. Beebe Family Partnership  
44070 US Hwy 2 S  
Libby, MT 59923

Teresa L. Beebe  
Harry R. Beebe  
44068 US Hwy 2 S  
Libby, MT 59923

### **Service via USPS Mail**

Charlotte A. Morain  
Mark R. Morain  
365 Paul Bunyan Ln  
Libby, MT 59923

### **Last Order:**

Robin W. Hersel  
Frederick J. Hersel  
143 Paul Bunyan Ln  
Libby MT, 59923-7991

## **Caption and Service List Updated 4/10/2023**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 14266-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BEEBE, JOHN L FAMILY PARTNERSHIP

44070 US HWY 2 S

LIBBY, MT 59923

CHARLOTTE A MORAIN

365 PAUL BUNYAN LANE

LIBBY, MT 59923

MARK R MORAIN

365 PAUL BUNYAN LANE

LIBBY, MT 59923

HARRY R BEEBE

44068 US HWY 2

LIBBY, MT 59923

TERESA L BEEBE

44068 US HWY 2

LIBBY, MT 59923

**Priority Date:** MARCH 25, 1927

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 1.71 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 45.00

**Source Name:** LIBBY CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	SENE	5	28N	30W	LINCOLN

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** MAIZE DITCH

**Period of Use:** APRIL 1 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	35.00		NENW	31	29N	30W	LINCOLN
2	10.00		NWNE	31	29N	30W	LINCOLN
<b>Total:</b>	45.00						